

State Board of Equalization

**OPERATIONS MEMO**

For Public Release

No : 1138

Date: September 7, 2006

**SUBJECT: Compliance Assessments for Use Tax Liabilities**

**I. PURPOSE**

This operations memo provides additional guidelines and procedures for creating Compliance Assessments (CAS) for unpaid use tax liabilities. All other policies and procedures outlined in the Compliance Policy and Procedures Manual under section 540.170 remain in effect.

The guidelines outlined in this memo do not apply to the Consumer Use Tax Section or the Customs Team and the Tax Source Team in the Centralized Collection Section.

**II. BACKGROUND**

The Motor Carrier Section of the Fuel Taxes Division, US Customs Services, and California Department of Food and Agriculture provide the Sales and Use Tax Department with requests for investigations on out-of-state purchases with delivery in California. Requests for investigations may also be provided by other sources.

While investigating the requests, staff may encounter situations where the taxpayer has voluntarily paid the use tax or the taxpayer states they have not reported or paid the use tax but intend to report and pay the tax on their income tax return to be filed with the Franchise Tax Board.

**III. PROCEDURES**

Persons purchasing tangible personal property from out-of-state vendors may report and pay use tax directly to the Board using the Individual Use Tax Return (BOE-401-DS) contained in Publication 79-B, *California Use Tax*. They also have the option of reporting the use tax on the income tax return filed with the FTB. However, if they are required to hold a California seller's permit, the use tax must be reported and paid on the sales and use tax return in the applicable period.

If the taxpayer intends to pay the use tax on their income tax return, compliance staff will retain the request for investigation documents (e.g., bill of lading, invoice, place of delivery, etc.) and verify that the use tax was reported and paid after the income tax return has been filed and processed by FTB. The Use Tax Due Dates shown on the following table identifies the due date for use tax in various circumstances. Please be aware that FTB provides an automatic six month

filing extension for individuals and an automatic seven month filing extension for corporations and exempt organizations.

### USE TAX DUE DATES

	<b>Tax Reported On</b>	<b>Due Date</b>	<b>Notes</b>
<b>Persons NOT Required to Hold Seller's Permits or Register for Consumer Use Tax Accounts</b>	FTB Tax Return	Due on or before the same date as the person's FTB return (RTC § 6452.1).	Use tax must be reported on the FTB tax return corresponding to the year in which the use tax liability was incurred.
	Individual Use Tax Return (BOE-401-DS)	Due on or before the last date of the month that follows the quarter in which the use tax liability was incurred.	For example, a person making purchases subject to use tax during the months of July and August must report and pay the tax to the Board on or before October 31st of the same year.
<b>Persons Required to Hold Seller's Permits or Register for Consumer Use Tax Accounts</b>	Sales and Use Tax or Consumer Use Tax Return	Due on or before the due date of the return.	Purchases subject to use tax must be reported on the return for the reporting period in which the purchases were first used in California.

Note: Table derived from Operations Memo 1115, *Use Tax Due Dates and Processing Use Tax Reported on Income Tax Returns Filed with the Franchise Tax Board*.

Verification of use tax reported and paid on FTB income tax returns may be obtained by submitting a request for FTB information using the External Access Tracking program. The information must only be accessed by the authorized resource person(s) within the requestor's office/section/area of responsibility.

In instances where a person either did not pay in full the use tax amount reported on their income tax return or paid more use tax on their return than was actually due and subsequently requested a refund of the overpayment, the Board will establish an arbitrary account. Therefore, IRIS must also be queried to determine if additional information regarding a person's use tax payment exists.

A CAS should be created for investigations that remain unresolved due to the taxpayer not filing the BOE-401-DS, or when proof of payment has not been established.

The procedures for creating a CAS for use tax assessments are as follows:

A. Tax Liability of \$5,000 or less

A compliance assessment should be created when the use tax liability is \$5,000 or less.

B. Tax Liability of more than \$5, 000

If the tax liability is more than \$5,000, refer the investigation to the audit staff with copies of all supporting documents for further investigation and the preparation of a field billing order (FBO). Supporting comments regarding the transfer of the investigation to audit will be entered in the TAR subsystem in IRIS.

C. Approval

The supervisor approving the CAS is responsible for ensuring that the thresholds outlined above are followed, the proper documentation retained and the appropriate comments have been entered in the TAR subsystem.

D. Appeals

Compliance assessments that are petitioned will be referred to the District Principal Compliance Supervisor. Petitioned FBO's will be referred to the District Principal Auditor for coordination and handling within timeframes and guidelines governing the Petitions Section.

E. Record Retention

Districts must maintain supporting documentation in a district file for three years.

#### **IV. OBSOLESCENCE**

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

Randie L. Henry, Deputy Director  
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